IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.578 OF 2005

Ashok Ramchandra Bidkar .. Appellant

Versus

Satappa Narsinga Kumbhar (dead)
and ors. .. Respondents

Mr.G.N.Salunke for appellant

CORAM : P.V.KAKADE, J.

DATE : 2ND AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order dated 16th July, 2004 passed by Addl. District Judge, Kolhapur allowing the appeal and setting aside the judgment and decree passed by Civil Judge, Junior Division, Kolhapur dismissing the suit of the plaintiff.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for possession of the suit property on the ground that the defendant had encroached thereon. The defendants contested the suit on various grounds.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to establish alleged encroachment over the suit property. The several contentions were raised by both the parties and those were accordingly adjudicated and finally suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the encroachment by the defendants were proved on the land of the plaitniff and as such the suit came to be decreed to the effect that the defendant no.1 had made encroachment to the extent of 3 Are and defendant no.4 to the extent of 5 1/2 Are on the land of the plaintiff and therefore, the plaintiff was entitled for possession of the said property as per the Map Exh.105 on record.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. It appears from the record that the trial court had made much important to the fact that Exh.27 was the application for appointment of Commissioner wherein the court had observed that District Inspector of Land Records was appointed as Commissioner and he shall depute his cadastral surveyor for measuring the suit lands and other lands and determine the encroachment. On such basis it was submitted that the actual land was measured by DILR, however he did not entered into witness box and witness examined was cadastral who was not measured the land and as such it was held that the alleged encroachment on the said land was not proved. However, the learned appellate court judge discarded the this reasoning and came to the conclusion that though the original map was not on record but the certified copy was on record and it appears from the entire record that the measurements were properly made as well as justified, which showed and establish the alleged encroachment to the extent, noted earlier, and hence the suit came to be decreed.

. The learned counsel for the appellant sought to raise various other grounds, however, those cannot be said to be substantial questions of law at all and it appears from the record that the lower appellate court has properly appreciated the entire evidence before it, and therefore, it would brook no interference.

5. In the result the appeal stands dismissed. Consequently the Civil Application No. 1008 of 2005 also stands dismissed.